



July 20, 2001

Ms. Anne-Marie P. Sheely  
Assistant County Attorney  
Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

OR2001-3168

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149682.

The Travis County Sheriff's Office (the "sheriff") received a request for "access to all active warrants in the Travis County Central Warrants and Travis County Sheriff's Office systems." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the representative samples of information you submitted.<sup>1</sup> We also received written comments from the requestor. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating why information at issue in attorney general decision should or should not be released).

We first note that some of the submitted records come within the scope of section 552.022 of the Government Code. Section 552.022(a) provides in part that

*the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

...

(17) information that is also contained in a public court record[.]

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.022(a)(17) (emphasis added). We have marked the submitted documents that are governed by section 552.022(a)(17). The sheriff must release these documents under section 552.022, except to the extent that they contain information that is expressly confidential under other law. Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, these exceptions are not other law that makes information confidential for the purposes of section 552.022. Thus, the sheriff may not withhold information that comes within the scope of section 552.022(a)(17) under sections 552.103 or 552.108. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived by governmental body), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108).

You also contend that the court-filed documents contain information that is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential under other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety (the "DPS") or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the common law right to privacy. Common law privacy protects private facts about individuals. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or embarrassing, such that its release would be

highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

You indicate that the court-filed records contain CHRI that is confidential under federal law and subchapter F of chapter 411 of the Government Code. You also claim that these records contain criminal history information obtained from the Travis County Criminal Justice System (the "CJS") that is protected by common law privacy. We have marked information in these records that the sheriff must withhold under section 552.101 of the Government Code if it was obtained from the NCIC or TCIC or from the CJS.

You claim that the remaining records are excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You represent to this office that the submitted records involve active warrants. You also state that these "incidents" relate to ongoing criminal investigations. You further explain that "[i]n some cases, the [sheriff] appears to be the law enforcement agency continuing the criminal investigation; in others, the case is or will be under prosecution in another law enforcement office, such as the County Attorney's Office or the District Attorney's Office, depending on the level of offense." Based on these representations and our review of the submitted records, we find that the release of information relating to active warrants would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (stating that statutory predecessor to section 552.108 may be invoked by any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution). We therefore conclude that section 552.108(a)(1) excepts from disclosure the submitted records that do not fall under section 552.022(a)(17). As we are able to make this

determination with respect to these records, we need not address your arguments under sections 552.103 or 552.130. We note that the sheriff has the discretion to release information that is protected from disclosure under section 552.108, unless the information is made confidential by law. *See* Gov't Code §§ 552.007, .101, .352; Open Records Decision No. 177 (1977).

In summary, the sheriff must release the submitted records that are governed by section 552.022(a)(17), except to the extent that those records contain criminal history record information that is confidential under federal law and chapter 411 of the Government Code or criminal history information that is protected by common law privacy under *Reporters Committee*. The sheriff must withhold that information under section 552.101 of the Government Code. The sheriff may withhold the remaining records under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

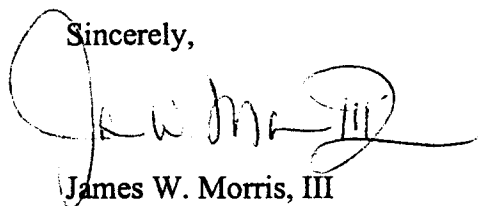
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 149682

Enc: Marked documents

c: Mr. Robert L. Buford, III  
Buford & Gonzalez  
100 Congress Avenue, 18<sup>th</sup> Floor  
Austin, Texas 78701  
(w/o enclosures)